

DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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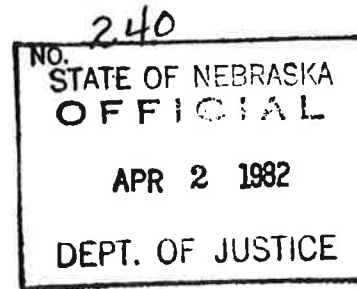
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April 2, 1982

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Senator Ernie Chambers
Nebraska State Legislature
State Capitol
Lincoln, Nebraska 68509

Dear Senator Chambers:

This is in response to your letter of March 22, 1982, inquiring as to the necessity of the Legislature reaffirming its continuing assent to various federal laws relative to highways.

In your letter, you refer to Neb.Rev.Stat. §§39-1304, 39-1304.01 and 39-1304.03 (Reissue 1978). Section 39-1304 makes reference to "Section 1 of the Act of Congress approved July, 1916, Public Law 156". Section 1 of this Act of Congress provided in part:

That the Secretary of Agriculture is authorized to cooperate with the states, through their respective State Highway Departments, in the construction of Rural Post Roads, but no money apportioned under this Act to any state shall be expended therein until its legislature shall have assented to the provisions of this Act, except that, until the final adjournment of the first regular session of the legislature held after the passage of this Act, the assent of the Governor of the state shall be sufficient. . . .

In 1917, the Legislature complied with the assent required by the foregoing Federal Highway Act of 1916. Laws of Nebraska 1917, Chapter 185 (House Roll No. 722), page 420, in section 1 provided:

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Assent is hereby given to the provisions of an Act of Congress entitled "An act to provide that the United States shall aid the states in the construction of rural post roads and for other purposes" approved July 11, 1916, and the good faith of the state is hereby pledged to provide funds sufficient to carry out the provisions of said Act.

This provision appears in the Compiled Statutes of Nebraska, 1929. However, it does not appear in the Compiled Statutes of Nebraska, 1922, nor the Revised Statutes of Nebraska, 1943. The next time any Legislative assent was given to the Federal Highway Act of 1916, or to any other Federal Highway Acts or law, was in 1955 and is that provided in Neb.Rev.Stat. §39-1304 (Reissue 1978). In 1957 and 1961, the legislature reaffirmed its continuing assent to the federal acts set forth in section 39-1304. These appear as sections 39-1304.01 and 39-1304.03 (Reissue 1978).

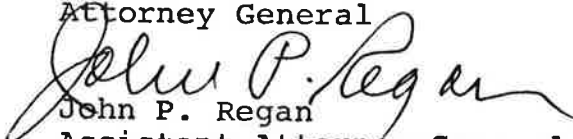
As can be seen, the Legislature's assent to the Federal Highway Act of 1916 and subsequent amendments has been sporadic. Amendments, prior to 1958, to the Federal Highway Act of 1916 made no additional provisions for Legislative assent by the states.

The Act of Congress approved August 27, 1958, Public Law 85-767 provided that the laws relating to highways are revised, codified and reenacted as Title 23, United States Code, "Highways". Section 2 of Public Law 85-767, August 27, 1958, repealed the Federal Highway Act of 1916. There was no provision in Public Law 85-767 requiring Legislative assent to Federal Highway Acts, nor have any appeared in Title 23 to the present time.

In conclusion, we are of the opinion that there is not, and has not been, any Federal Highway Act requiring the assent of state legislatures to Federal Highway Acts subsequent to August 27, 1958.

Very truly yours,

PAUL L. DOUGLAS
Attorney General


John P. Regan
Assistant Attorney General

JPR/ta

cc: Mr. Patrick J. O'Donnell
Clerk of the Legislature